No. 06-10119

In the Supreme Court of the United States

ALLEN SNYDER, ET. AL., PETITIONER

v.

STATE OF LOUISIANA, ET. AL., RESPONDENT

27 September, 2007

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

NATHAN BUNIVA, **COUNSEL OF RECORD,** REPRESENTING THE STATE OF LOUSIANA (RESPONDENT)

LOTFI SARIAHMED, **COUNSEL OF RECORD,** REPRESENTING ALLEN SNYDER

QUESTION PRESENTED

Whether the State Supreme Court of Louisiana were wrong in its decision to confirm the trial court's ruling that the Petitioner, Allen Snyder should be sentenced to death after being found guilty and reaffirming that the jurors struck during jury selection were not struck due to race.

PARTIES TO THE PROCEEDINGS

In No. 06-10119, the Petitioner is Allen Snyder. The Respondent is the State of Louisiana.

TABLE OF AUTHORITIES

Cases

Miller-El v. Dretke 545 U.S. 231 (2005)

Batson v. Kentucky 476 U.S. 79 (1986)

Swain v. Alabama 380 U.S. 202 (1965)

Statute

Louisiana law LSA-C.Cr.P. art. 795(C)

Constitutional Provision

Equal Protection Clause 14th Amendment

6th Amendment

STATEMENT

The petitioner Allen Snyder was convicted of first-degree murder and sentenced to death in the Louisiana trial court by a jury of his peers. The question presented attempts to touch on the true essence of the case, which is whether in light of United States Supreme Court decision in Miller-El v. Dretke, the Supreme Court of Louisiana correctly affirmed that the prosecution used its peremptory strikes in a non-discriminatory manner.

The history of racial discrimination regarding peremptory strikes in jury selection is a rather straightforward one. In 1965, in *Swain v. Alabama* the U.S. Supreme Court ruled that a State's overt denial of potential jurors solely on the basis of race was in clear violation of the Equal Protection Clause of the U.S. Constitution. However, the burden of proof for the defendant was "crippling" and therefore in 1986 in *Batson v. Kentucky* the Supreme Court eased the requirements of the defendant to prove that the prosecutors' peremptory strikes were based on race. A three-step process to prove racial discrimination was created now known as a Batson challenge:

> "1. The trial court must determine whether the defendant has made a prima facie showing that the prosecutor exercised a peremptory challenge on the basis of race.
> 2. If the showing is made, the burden shifts to the prosecutor to present a race-neutral explanation for striking the juror in question. Although the prosecutor must present a comprehensible reason, the second step does not demand an explanation that is persuasive or even plausible; so long as the reason is not inherently discriminatory, it suffices.
> 3. The court must determine whether the defendant has carried his burden of proving purposeful discrimination."

In 2005, the Supreme Court focused on this third and final step in *Miller-El v. Dretke*. The court ruled that the "persuasiveness of the justification proffered by the prosecutor." Furthermore the court said that the burden for proving discrimination ultimately rests with the opponent of the strike. The court further states that the trial court must be very aware and use all evidence to determine the justification proffered by the prosecutor.

ARGUMENT

With the aforementioned history in mind, the court must now consider the case presented before it. In regards to the five African-American jurors that were challenged, it must be stated that the defense raised no Batson claim to three of the struck jurors. Therefore, by not challenging the striking of these three jurors, they must not be considered in this case. This then leaves the court with two African-American prospective jurors, which were struck, Jeffery Brooks and Elaine Scott.

Jeffery Brooks was the potential juror who was originally accepted but later back struck as stated in the petitioner's brief. Jeffery Brooks was a student teacher who appeared "very nervous" throughout the jury selection process. When prompted to give a reason for the strike of Brooks, the prosecutor stated "He's a student teacher/ My main concern is for that reason, that being that he might, to go home quickly, come back with a guilty of a lesser verdict so there wouldn't be a penalty phase." Thus implying Brooks would be worried about how the time away from school would affect both his own schoolwork and his duties as a teacher. As the Constitution states, everyone has a right to a fair trial by a jury of their peers. Jurors who are preoccupied or worried about the outside world and not as committed to a case would be in violation of the 6th Amendment to the U.S.

Constitution. In addition, at the beginning of the jury selection process, Brooks actually approached the bench himself to raise a hardship concern that being a juror would have on his career. Brooks stated, "there is something I'm missing right now that will better me towards my teaching career." Brooks initiated this concern about the trial on his own accord. This explanation clearly has nothing to do with race.

Elaine Scott, the other African American juror who was struck, was very unclear about her ability to apply the law when it came to the death penalty, which is legal in Louisiana. The prosecution stated "I observed she was very weak on her ability to consider the imposition of the death penalty. Her words exactly- I wrote it down, that she thinks she could, and that's the reason for our challenge." If Scott was unclear in her ability to apply the death penalty, then she obviously needs to be taken out of the pool of potential jurors. This again has absolutely nothing to do with race.

CONCLUSION

Keeping in mind that only two peremptory strikes are in question here, it seems rather obvious that the defense was not able to prove that either was based on racial discrimination. Both of the aforementioned potential jurors presented significant legal challenges to the judicial process required in this case, even in light of the recent Miller ruling which requires further analysis of the reasoning given by the prosecutor for the strikes. The prosecution was clearly able to show race-neutral reasoning for the strikes in the Batson claim process.

Additionally, this case raises no substantial legal issues, which the court has not already decided upon. The recent Miller decision addressed a very similar case and helped the Supreme Court of Louisiana in correctly deciding this case.

To briefly address the petitioner's two page rant about the prosecutors intention's in this case: Not only do these claims have no legal merit in this case and are a complete waste of the court's time, but they are completely false. It is ridiculous that such claims would be raised in a petition to the highest court of the land, the United States Supreme Court.

The respondent respectfully requested that the court reject Allen Snyder's petition for writ of certiorari to the United States Supreme Court, as the Court has many more important and pressing issues to handle.

RESPECTFULLY SUBMITTED,

NATHAN BUNIVA
COUNSEL OF RECORD
STATE OF LOUISIANA